

2 - La Législation s'applique à couper court à ce qui suscite la rancune et l'inimitié, c'est pourquoi le Prophète (ﷺ) a interdit de vendre les marchandises sur le lieu où on les a achetées afin que l'acheteur ne puisse pas réaliser un profit, et que cela ne suscite dans le cœur du vendeur de la rancune et de l'inimitié, même si le vendeur a vendu de plein gré, mais il est connu que si l'acheteur réalise un profit, il pensera qu'il l'a eu et ne lui en a pas donné le bon prix.¹

Shaykh Ar-Rajīhī dit : Le hadith indique qu'il n'est pas permis à l'acheteur de vendre la marchandise qu'il a achetée jusqu'à ce qu'il la « rapporte chez lui », et le sens apparent est que cela désigne la prise de possession, et on a employé la formulation « rapporter chez soi » car généralement la prise de possession de l'acheteur consiste à ce qu'il rapporte cette marchandise en un lieu qui lui appartient, et pour la majorité des savants le fait de transporter la marchandise en un lieu qui lui est propre marque la prise de possession, car la propriété du [premier] vendeur disparaît alors.²

L'utilisation de différentes monnaies

٦٨٢ - وَمَنْ قَالَ : لَيْسَ بِي بَائِعٌ بِأَنْفُسِي وَأَخَذَ الشَّرْهَ وَأَبْعَ بِلَيْسٍ وَأَخَذَ شَيْئِينَ أَخَذَ فَلَمْ يَنْفَعِ هَذَا مِنْ هَذَا : فَلَا رَيْبَ لَهُ : لَا يَأْتِي أَنْ يَأْخُذَ بِشَيْءٍ يَوْمَهُ مَا لَا يَلْفُظُ وَيُسَكَّنُ شَيْئًا - رَوَاهُ ابْنُ أَبِي شَيْبَةَ وَصَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ

683 - Il rapporte également : J'ai dit : Ô Messager d'Allah ! je vends des chameaux à Al-Baqī'. Je vends en dinars et je perçois des dirhams, ou je vends en dirhams et je perçois des dinars, je prends l'un pour l'autre, et inversement. Le Messager d'Allah (ﷺ) dit : « Il n'y a pas de mal à ce que tu les perçoives au cours du jour, tant que tous vous séparez sans qu'il n'y ait de reliquat entre vous. » [Ṣaḥīḥ]

Shaykh Ar-Rajīhī dit : Le hadith indique qu'il est permis de percevoir de l'or à la place de l'argent, et de l'argent à la place de l'or, car Ibn 'Umar vendait des chameaux d'un montant fixé en dinars puis percevait la somme en dirhams, et inversement. Une seule des deux monnaies étant présente, et cette pratique est permise à condition que les deux parties ne se séparent qu'

lorsque l'intégralité de la valeur a été acquittée et qu'il n'en reste aucun reliquat.³

L'interdiction de la surenchère mensongère

٦٨٤ - وَمَنْ قَالَ : هُوَ رَيْبُكَ إِنَّهُ عَنْ الْخَش - فَلَمْ يَنْفَعِ

684 - Il rapporte également : « Le Messager d'Allah (ﷺ) a interdit la surenchère mensongère. » [Ṣaḥīḥ]

Enseignements du hadith

1 - Le terme *Naysh* désigne dans la langue le fait d'effrayer le gibier et de le faire sortir de sa cachette ; et dans la terminologie religieuse, cela désigne le fait de surenchérir de manière mensongère, alors qu'on ne veut pas acheter, mais uniquement profiter au vendeur, nuire à l'acheteur, ou jouer.

2 - L'interdiction implique le caractère illicite de la chose.

3 - Le contrat de vente reste valide, mais si l'acheteur a été lésé plus que de coutume par la surenchère, il a le choix de conserver la marchandise à ce prix ou de la rendre et récupérer son argent. Al-Wazīr a dit : « Les savants sont unanimes pour dire que si le préjudice dans la vente n'est pas excessif, cela n'influe pas sur la validité de l'acte de vente. »

4 - Shaykh Al-Islām Ibn Taymiyyah a dit : « Concernant les ventes qui comportent une injustice vis-à-vis d'une des deux parties, comme lorsqu'on mène, dépêche, surenchère ou autre, le Législateur ne les a pas mises au rang des ventes licites, mais Il a donné le choix à celui qui subit l'injustice qui peut, s'il le veut, annuler ou accepter la vente. »

Parmi les ventes aléatoires illicites

٦٨٥ - وَمَنْ جَارَى بَيْنَ يَدَيْهِ : أَنْ يَكُونَ : قَرْنٍ مِنَ الْمُحْلَلِ وَالْمُحَرَّمِ وَالْمَعْرُوفِ وَالْمُنْكَرِ

الْقَرْنُ إِلَّا أَنْ تَلْعَمَ - رَوَاهُ ابْنُ أَبِي شَيْبَةَ وَصَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ

685 - Jābir Ibn 'Abd Allah (رضي الله عنه) rapporte : « Le Prophète (ﷺ) a interdit Al-Mukhalafah, Al-Muzābahah, Al-Mukhalabah, et la vente assortie de clauses restrictives, sauf si elles sont clairement définies. » [Ṣaḥīḥ]

¹ Ghayr Buhārī, Al-Mawāzīn, Livre des ventes, cassette n°9.

² Al-Bāhī (2/19).

³ Abū Dāwūd (2354), la chaîne de transmission est faible si on attribue cette parole au Prophète (ﷺ).

¹ Al-Bāhī (2/20).

² Al-Bukhārī (2342) et Muslim (2344).

³ Al-Bukhārī (2381) et Muslim (2346).

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